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2 David Bricklin, WSBA #7583
3 Rick Eichstaedt, WSBA #36487
4 Bricklin & Newman, LLP
5 35 West Main, Suite 300
6 Spokane, WA 99201
7 Telephone: (877) 264-7220
8 Facsimile: (509) 835-3867
9 Email: rick@bnd-law.com

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11
12 Attorneys for Plaintiff
13 THE LANDS COUNCIL

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15
16 **UNITED STATES DISTRICT COURT FOR THE**
17 **EASTERN DISTRICT OF WASHINGTON**

18
19 THE LANDS COUNCIL, a non-
20 profit corporation.

21 Plaintiff,

22 vs.

23 CITY OF PULLMAN, a municipal
24 corporation,

25 Defendant.

26 Case No. CV-12-0053-JLQ

27  ~~Proposed~~ CONSENT DECREE

1 Plaintiff, The Lands Council, and Defendant, the City of Pullman (the
2 "City"), subject to approval by the Court, hereby agree to the terms and conditions
3 of this Consent Decree. The Lands Council and the City are referred to collectively
4 as the "Parties," or individually as a "Party," to this Consent Decree.

5 **RECITALS**

6 1. The Lands Council is a Washington nonprofit organization formed and
7 operated for the purpose of preserving and revitalizing Inland Northwest forests,
8 water, and wildlife through advocacy, education, effective action, and community
9 engagement. The Lands Council identifies environmental and health issues along
10 the South Fork of the Palouse River and reaches out to river users who share its
11 commitment to a river that is swimmable, fishable, and properly regulated;

12 2. The City operates a Wastewater Treatment Plant ("WWTP") that
13 collects, transports, and treats sewage for the City, covered by National Pollution
14 Discharge Elimination System (NPDES) permit No. WA-004465-2 ("Wastewater
15 Permit"), and a Municipal Separate Storm Sewer System ("MS4") that covers the
16 entire incorporated area of the City and is regulated by the Eastern Washington
17 Phase II Municipal Storm Water Permit ("Phase II Permit"). Washington State
18 University ("WSU") is a major landowner in the City of Pullman and owns and
19 operates portions of the MS4 located on or otherwise serving WSU's Pullman
20 Campus. WSU is a Secondary Permittee under the Phase II Permit and is
21 implementing an independent stormwater program ("WSU Stormwater
22 Program")(See www.ehs.wsu.edu/PH/SW/Stormwater.html);

23 3. The City has engaged in, and plans to continue to engage in, operation
24 of its MS4 and WWTP that service the City and has coordinated with and plans to
25 continue to coordinate with, WSU regarding the WSU Stormwater Program;

1 4. On April 21, 2010, pursuant to the requirements of the Federal Water
 2 Pollution Control Act (“Clean Water Act” or “CWA”), 33 U.S.C. § 1342, The
 3 Lands Council sent the City a 60-day Notice of Intent Letter (“Notice Letter”);

4 5. The Notice Letter alleged that the City has violated and continues to
 5 violate the Clean Water Act along with the terms and conditions of the Phase II
 6 Permit and Wastewater Permit;

7 6. On April 22, 2010, the City acknowledged receipt of the Notice Letter
 8 and later expressed its intent to work with The Lands Council to ensure that the
 9 MS4 and WWTP are in compliance with legal obligations and the water protection
 10 goals for the South Fork of the Palouse River environment;

11 7. The Lands Council and the City have been engaged in settlement talks,
 12 initiated in June 2010, and now, to avoid the time, expense and uncertainty of
 13 protracted litigation, with no admission of liability or the validity of any claim,
 14 allegation or defense, and subject to approval by the Court, the Parties agree to the
 15 following terms and conditions set forth in this Consent Decree.

16 NOW THEREFORE, it is hereby stipulated and agreed between the Parties,
 17 and ordered and decreed by the Court, as follows:

18 I. GENERAL OBJECTIVES

19 1. The objectives of this Consent Decree are:

20 a. To ensure that the City complies with the Clean Water Act;
 21 b. To ensure that the City continues to use, implement, and
 22 improve ways, means, and methods to minimize pollution discharges from the MS4
 23 and WWTP systems into the South Fork of the Palouse River; and

24 c. To further the goals and objectives of the Clean Water Act

25 II. DEFINITIONS

26 Unless otherwise expressly defined herein, terms used in this Consent Decree,
 27 which are defined in the CWA or in regulations, or rules promulgated under the

1 CWA, have the meaning assigned to them in the applicable statutes, regulations, or
 2 rules.

3 **III. JURISDICTION AND VENUE**

4 For the purposes of entry and enforcement of this Consent Decree, the Parties
 5 stipulate that the United States District Court for the Eastern District of Washington
 6 has jurisdiction over the Parties and subject matter of this action. The Parties
 7 further stipulate that venue is appropriate in the United States District Court for the
 8 Eastern District of Washington. Solely for the purposes of entry and enforcement
 9 of this Consent Decree, the City agrees that it shall not challenge The Lands
 10 Council's standing to bring this action and/or to enforce the terms of this Consent
 11 Decree.

12 **IV. EFFECT OF CONSENT DECREE**

13 The Lands Council does not, by its consent to this Consent Decree, warrant or
 14 aver in any manner that the City's compliance with this Consent Decree will
 15 constitute or result in compliance with any Federal, State, or local law or regulation.
 16 Nothing in this Consent Decree shall be construed to affect or limit in any way the
 17 obligation of the City to comply with all Federal, State and local laws, and
 18 regulations governing any activity required by this Consent Decree.

19 Neither this Consent Decree, nor any payment pursuant to the Consent
 20 Decree, shall constitute evidence or be construed as a finding, adjudication, or
 21 acknowledgement of any fact, law, or liability, nor shall it be construed as an
 22 admission or violation of any law, rule, regulation, permit, or administrative order
 23 by the City. However, this Consent Decree and/or any payment pursuant to the
 24 Consent Decree may constitute evidence in actions seeking to enforce compliance
 25 with this Consent Decree. The City maintains and reserves all defenses it may have
 26 to any alleged violations that may be raised in the future.

V. APPLICABILITY

This Consent Decree addresses all violations alleged by The Lands Council from April 21, 2005, up to and through the Termination Date of the Consent Decree, as defined below.

The Parties certify that their undersigned representatives are fully authorized to enter into this Consent Decree, to execute it on behalf of the Parties, and to legally bind the Parties to its terms.

The Parties, including any successors, agree to be bound by this Consent Decree and not to contest its validity in any subsequent proceeding to implement and enforce its terms. Except as provided in this Consent Decree, no change in ownership or corporate or other legal status of the City or any transfer of the City's assets or liabilities shall in any way alter the responsibilities of the City or any of its successors or assigns thereof, under this Consent Decree.

- VI. EFFECTIVE DATE AND TERMINATION DATE

The term "Effective Date," as used in this Consent Decree, shall mean the date the Court orders entry of the consent decree.

The term "Termination Date" as used in this Consent Decree shall mean the date of termination of the Consent Decree, which shall occur five (5) years from the Effective Date, so long as all payments, fees, and costs due under or pursuant to this Consent Decree, including, but not limited to, provisions governing Supplemental Environmental Projects, Attorney's Fees and Costs, and Dispute Resolution, have been paid in full; Provided, however, the "Termination Date" shall be six (6) years from the Effective Date if the City is not issued a new Wastewater Permit on or before December 31, 2014.

In the event that the City's MS4 system and/or WWTP ceases to be operated and maintained by the City or any successors, the City shall send a letter to The Lands Council at the address listed below, stating facts justifying full or partial

1 termination of the City (full for both MS4 system and WWTP, or partial for either
 2 the MS4 or the WWTP) from the Consent Decree and requesting a stipulation to
 3 dismiss the City either fully or partially. The Lands Council shall respond to the
 4 City's request within thirty (30) days, and shall not unreasonably withhold approval
 5 of a stipulation. The stipulation shall be substantially in the following form: "The
 6 Lands Council and the City hereby stipulate and agree that the City is hereby
 7 released from all (or part of the) obligations under the Consent Decree and that The
 8 Lands Council shall not seek to enforce any term of this Consent Decree against the
 9 City whether or not the District Court approves this stipulation." If The Lands
 10 Council does not agree to stipulate to the City's request, The Lands Council or the
 11 City may invoke the Formal Dispute Resolution process pursuant to Section X of
 12 this Consent Decree. The City agrees that its successors, contractors, or agents who
 13 may operate or maintain the MS4 system and/or WWTP shall be bound to the terms
 14 of this Consent Decree.

15 **VII. COMMITMENTS OF DEFENDANT**

16 Upon the Effective Date of this Consent Decree, as provided in Section VI,
 17 unless otherwise indicated, subject to any required regulatory approvals, and
 18 subject to modifications that may be required to reflect any applicable changes in
 19 legal or regulatory requirements during the operative periods of these provisions,
 20 the City agrees to develop, implement, and comply with the Employee Training
 21 Requirement, Stormwater Program Enhancement Plan, and WWTP Obligations.

22 **A. Employee Training Requirement**

23 No later than twelve (12) months after the Effective Date, the City shall
 24 implement a program to train and educate designated employees regarding
 25 compliance with the Wastewater Permit and the requirements of this Consent
 26 Decree, including, but not limited to, all employees responsible for Best
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1 Management Practice (“BMP”) implementation and maintenance and those
2 employees responsible for performing sampling at the WWTP.

3 Training will be provided on the proper implementation of all structural and
4 non-structural BMPs at the WWTP and proper sampling and reporting. The
5 training will be conducted in English and all other languages appropriate to non-
6 English speaking employees.

7 The employee training will be repeated as necessary to ensure compliance
8 with the terms of this Consent Decree and the Wastewater Permit, and always prior
9 to an employee becoming responsible for compliance with the Wastewater Permit
10 or the terms of this Consent Decree. The City shall maintain training records to
11 document compliance with this paragraph at the WWTP for five years, and will
12 make such records available to The Lands Council within fourteen (14) days of a
13 written request.

14 **B. Stormwater Program Enhancement Plan**

15 1. The City shall implement and complete the Stormwater Program
16 Enhancement Plan (attached hereto as Exhibit A) no later than twelve (12) months
17 after the Effective Date.

18 2. The City shall sample stormwater annually for PCBs at the following
19 two locations: the Stadium Way drain and Larry Street storm drain. The Stadium
20 Way drain was sampled by the Department of Ecology (“Ecology”) for PCBs
21 previously. The sampling shall occur when the City collects PCB samples at the
22 WWTP, beginning March 2012. The stormwater samples will be 24-hour
23 composites.

24 3. Three years after the Effective date, the City will review the PCB data
25 and based, in part, on that data prepare a Revised Stormwater Program
26 Enhancement Plan. The City shall provide The Lands Council with a copy of a
27 draft of such Revised Plan for review and comment prior to submitting the Revised
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1 Plan to Ecology. The parties will work in good faith to resolve any disagreements
2 regarding the content of the Revised Plan within 60 days. If the parties are not able
3 to resolve the disagreement within 60 days, The Lands Council may pursue all
4 remedies available consistent with Section XII.

5 **C. WWTP Obligations**

6 The City shall complete all permanent improvements, interim reports, and
7 other requests according to the scope of work and to the implementation schedule
8 outlined below:

9 1. Permanent Improvements

- 10 a. No later than twelve (12) months after the Effective Date, the
11 City shall investigate and deliver a feasibility study that
12 includes: 1) an evaluation with regard to upsizing, expanding or
13 replacing the influent pump station to have a capacity of 13 mgd
14 with the largest single unit out of service; 2) a hydraulic analysis
15 of the headworks; and 3) a hydraulic analysis of the primary
16 clarifiers, including replacing the primary effluent line from
17 primary clarifier No. 1 with an appropriately-sized pipe, if
18 determined necessary. No later than twelve (12) months from
19 the completion of the feasibility study, the City shall complete
20 the design to improve the headworks as necessary to remedy any
21 capacity inadequacies identified by the hydraulic analysis; to
22 upscale, expand and/or replace the influent pump station to have
23 a capacity of 13 mgd with the largest single unit out of service;
24 and to make improvements to the primary clarifiers, as
25 determined necessary in the feasibility study. No later than
26 twenty-four (24) months from completion of the design, the City
27 shall substantially complete construction.

- 1 b. The phrase "substantial completion of construction" as used in
2 this Consent Decree shall mean the state of completion reached
3 when an improvement upon the WWTP may be used for its
4 intended use.
- 5 c. The City shall proceed immediately after the Effective Date with
6 the Secondary Process Improvements Project (as described in
7 the City's *Secondary Process Improvements - Schematic Design*
8 *Phase* (CH2M Hill, March 2006)) and provide The Lands
9 Council with a funding status report no later than six (6) months
10 after the Effective Date. If the City receives funding through the
11 Clean Water State Revolving Fund, the City shall substantially
12 complete construction no later than thirty-three (33) months
13 after the Effective Date. If the City does not receive state
14 funding and needs to issue bonds for financing, the City shall
15 substantially complete construction no later than thirty-nine (39)
16 months after the Effective Date.
- 17 d. To address issues with the WWTP's disinfection system, the
18 City shall proceed with upgrades to the current system for more
19 efficient dosage control. No later than nine (9) months after the
20 Effective Date, the City shall verify that construction is
21 substantially complete.
- 22 e. No later than eighteen (18) months after the Effective Date, the
23 City shall install an influent bypass measurement device and
24 required screen, alarm and annunciator as agreed upon by The
25 Lands Council's consultant and the City, subject to approval by
26 Ecology.

27 2. Interim Commitments
28

1 a. The City shall deliver progress reports at six (6) month intervals
2 regarding (1) the feasibility study; (2) construction of
3 improvements to the influent pump station, headworks, and
4 primary clarifiers; (3) construction of the Secondary Process
5 Improvements Project; and (4) the influent bypass measurement
6 device, alarm and annunciator, until construction is substantially
7 complete.

8 3. Other Requests

- 9 a. The City shall provide the following information no later than
10 three (3) months after the Effective Date: 1) Deliver technical
11 memorandum on waste loads investigated during the Fall of
12 2010; 2) Evaluate the primary treatment with chemical
13 enhancement concept, and deliver to The Lands Council a copy
14 of the technical memorandum; and 3) Submit a report with
15 estimates of staff and laboratory needs.
- 16 b. The City shall provide an updated O&M Manual no later than
17 twelve (12) months after the Effective Date, and a revision to be
18 completed no later than twelve (12) months after completion of
19 the Permanent Improvements described in §1.a.
- 20 c. The City shall, within thirty-three (33) months of Ecology's
21 issuance of a new Wastewater Permit, prepare a Facility Plan in
22 accordance with the Environmental Protection Agency's
23 ("EPA") *Guidance for Preparing a Facility Plan (MCD-46)* and
24 Ecology's *Criteria for Sewage Works Design*.

25 D. **Monitoring and Modification**

26 During implementation of the Stormwater Program Enhancement Plan and
27 WWTP Obligations, the Parties shall meet quarterly to allow the City to update The
28

Lands Council regarding the progress and effectiveness of the Stormwater Program Enhancement Plan and WWTP Obligations. The Parties agree that telephonic conferences are sufficient, unless either party requests differently for a particular meeting. The Parties agree that The Lands Council's consultant may participate in the stead of The Lands Council.

If as a consequence of information discovered during implementation the City modifies the obligations or plan in any way, the City shall send those modifications to The Lands Council for comment. The Lands Council shall have thirty (30) days to provide written comments. The City shall have thirty (30) days to provide a written response outlining either 1) how the Land's Council's recommendations will be implemented; or 2) why the City will not implement the recommendations. Both parties reserve the right to invoke the dispute resolution set forth in Section X if they cannot reach agreement on the modifications.

If at any point during the five (5) years set forth above, the Phase II Permit or Wastewater Permit is modified in a manner that will impact the Stormwater Program Enhancement Plan or WWTP Obligations; the City shall send those modifications to The Lands Council for comment. Further, if the City seeks a modification of either permit from Ecology, the City agrees to concurrently serve The Lands Council with its modification request. The Lands Council shall have thirty (30) days to provide written comments. The City shall have thirty (30) days to provide a written response outlining either 1) how The Land's Council's recommendations will be implemented; or 2) why the City will not implement the recommendations. Both parties reserve the right to invoke the dispute resolution set forth in Section X if they cannot reach agreement on the modifications.

E. Costs for Monitoring of Consent Decree Compliance

Understanding that The Lands Council is a non-profit organization with limited resources, the City agrees to compensate The Lands Council for time spent

1 by legal staff or technical consultants reviewing compliance reports and other
 2 documents generated pursuant to this Consent Decree in the amount of \$25,000.
 3 The City shall pay this sum within sixty (60) days of the Effective Date of this
 4 Consent Decree to offset the cost of monitoring compliance with this Consent
 5 Decree. Payment shall be made in the form of a single check payable to "Gonzaga
 6 University Legal Assistance Trust" addressed to:

7 Rick Eichstaedt
 8 Bricklin & Newman, LLP
 9 35 West Main, Suite 300
 Spokane, WA 99201

10 Once payment has been tendered, all bills for time spent by legal staff or
 11 technical consultants in monitoring compliance with this Consent Decree shall be
 12 sent directly to plaintiff's counsel and paid out of the "Gonzaga University Legal
 13 Assistance Trust." University Legal Assistance shall provide the City with a
 14 yearly accounting, including the bills paid, the work conducted, and the remaining
 15 amount in the Trust account. If costs for monitoring do not exceed \$25,000 over
 16 the five (5) year term of this Consent Decree, all money remaining in the Trust
 17 account shall be paid to Palouse Clearwater Environmental Institute ("PCEI") in
 18 accordance with Section IX below.

19 **VIII. COMMITMENT OF PLAINTIFFS**

- 20 1. Subject to approval by the Court, pursuant to this Consent Decree:
 21 A. The Lands Council's Complaint, and all claims therein, shall be
 22 dismissed with prejudice upon the Effective Date, pursuant to Federal Rule of Civil
 23 Procedure 41(a)(2), and judgment shall be entered accordingly; and
 24 B. The Court shall retain jurisdiction over the Parties until the
 25 Termination Date of this Consent Decree with respect to disputes arising under this
 26 Consent Decree for which any of the Parties invoke dispute resolution.

1 2. The City plans to request that Ecology review the Palouse TMDL to
2 reconsider the waste load allocation contained therein. The Lands Council agrees
3 not to object to such a request.
4

5 **IX. SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

6 1. The City shall implement and complete the following Supplemental
7 Environmental Project's ("SEP"):

8 A. Within sixty (60) days of the Effective Date of this
9 Consent Decree, the City shall pay a sum of \$150,000 to the PCEI, an
10 Idaho non-profit corporation, to fund the costs of implementing a
11 Riparian Preservation Project (hereafter "the Project"). The Project
12 shall target identified areas within the Palouse River watershed, and
13 shall ensure that projects within the incorporated areas of the City of
14 Pullman receive priority ranking when determining an appropriate
15 project.

16 B. The payment shall be made via certified check
17 payable to "Palouse Clearwater Environmental Institute," and sent via
18 certified mail, return receipt requested, to:

19 Palouse Clearwater Environmental Institute
20 P.O. Box 8596
21 Moscow, Idaho 83843

22 The Project shall include planting native vegetation along identified
23 riparian areas within the Palouse watershed, with special consideration
24 given to projects within the City. The Project may also utilize
25 additional techniques such as channels, bank re-sloping, tree
revetment, and erosion control blankets necessary to improve the water
quality along the Palouse River. During the first six (6) months of the
27 project, PCEI staff shall assess potential problems along watershed
28

1 water bodies and develop a specific plan. If feasible, a section of the
2 specific plan will focus on the riparian areas just downstream of the
3 Pullman Waste Water Treatment Plant. PCEI shall send a copy of this
4 specific plan to The Lands Council and the City. The City shall have
5 30 days to comment on the plan. PCEI shall use best efforts to address
6 the City's comments.

7 2. In accordance with EPA's SEP Policy, PCEI shall provide an
8 annual project report to EPA and DOJ explaining its activities and
9 achievements and including a complete financial accounting of all
10 income and expenses associated with the Project. PCEI agrees to
11 provide the City and The Lands Council with a copy of the annual
12 report. The Project report shall be delivered to EPA and the Parties at
13 twelve (12) month intervals calculated from the date of the grant's
14 receipt.
15

16 **X. DISPUTE RESOLUTION AND ENFORCEMENT**

17 If a dispute under this Consent Decree arises, or if any Party believes that a
18 breach of this Consent Decree has occurred, the Parties shall meet and confer
19 within fourteen (14) days of receiving written notification from any other Party of a
20 request for a meeting. This notification shall explicitly state the nature, underlying
21 facts, and legal grounds for the dispute or alleged breach. At this meeting, the
22 Parties shall discuss the dispute or alleged breach and seek to develop a mutually
23 agreed upon plan, including implementation dates, to resolve the dispute or alleged
24 breach. If the Parties fail to meet and confer or if the meeting does not resolve the
25 issue, and after at least seven (7) days have elapsed since the meet and confer
26 occurred or should have occurred, each Party shall be entitled to all rights and
27 remedies under the law, including bringing a motion before the United States
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1 District Court for the Eastern District of Washington, which shall retain jurisdiction
 2 over the action for the Term of this Consent Decree, for the limited purposes of
 3 enforcement of the terms of this Consent Decree.

4 **XI. REIMBURSEMENT OF FEES AND COSTS.**

5 1. The City shall reimburse The Lands Council in the amount of
 6 \$83,687.43 for attorney's fees and costs, consultant and expert fees and costs, and
 7 all other fees and costs incurred by The Lands Council in connection with the
 8 litigation resolved by this Consent Decree.

9 2. The City shall provide such reimbursement by check, payable and
 10 delivered as follows, within thirty (30) days of the Effective Date payable to
 11 "Gonzaga University Legal Assistance Trust" to be used exclusively for
 12 reimbursement of The Lands Council's attorneys, expert/consultant fees and
 13 litigation costs in this action, and delivered to:

14
 15 Rick Eichstaedt
 16 Bricklin & Newman, LLP
 17 35 West Main, Suite 300
 18 Spokane, WA 99201

19 **XII. WAIVER AND RELEASES**

20 1. The Lands Council's Waiver and Release: The Lands Council, on its
 21 own behalf and on behalf of its officers, directors, employees, members, parents,
 22 subsidiaries, affiliates and each of their successors, assigns, insurers, agents,
 23 attorneys, consultants and other representatives:

24 A. Releases the City and its respective officers, directors,
 25 employees, departments, contractors and subcontractors, and each of their
 26 predecessors, successors, assigns, insurers, agents, attorneys, consultants and other
 27 representatives (collectively the "Released Parties," or each individually a
 28 "Released Party") from, and waives, all claims alleged in this action, including

1 without limitation all claims for injunctive relief, damages, penalties, fines,
 2 sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs,
 3 expenses or any other sum incurred or for matters relating to the claims and
 4 allegations that were asserted by The Lands Council in its Complaint, and Notice
 5 Letter, relating to alleged violations of the Clean Water Act, Phase II Permit, and
 6 Wastewater Permit, occurring or arising up to and including the Effective Date;

7 B. Agrees to execute covenants not to sue Released Parties and
 8 each Released Party with respect to The Lands Council's released claims that may
 9 occur or arise up to and including the Termination Date for matters relating to the
 10 claims and allegations that were asserted by The Lands Council in its Complaint
 11 and Notice Letter.

12 C. However, this release does not operate to preclude the City's
 13 liability as to any claims which were unknown by The Lands Council at the time of
 14 executing this Consent Decree or were not included in the Complaint or NOI,
 15 including claims arising from the failure to comply with the terms of any new or
 16 substantially modified conditions in a renewed and/or reissued NPDES permit
 17 applicable to the MS4 and/or WWTP.

18
 19 2. The City's Waiver and Release of The Lands Council: The City, on its
 20 own behalf and on behalf of those Released Parties under its control, releases The
 21 Lands Council and its respective officers, directors, employees, members, parents,
 22 subsidiaries, and affiliates, and each of its successors, assigns, insurers, agents,
 23 attorneys, consultants and other representatives from, and waives all claims which
 24 arise from or pertain to, The Lands Council's released claims, occurring or arising
 25 up to and including the Termination Date.

26 3. No Admission: The Parties enter into this Consent Decree for the
 27 purpose of avoiding the time, expense, and uncertainty of further litigation.
 28 Nothing in this Consent Decree shall be construed as, and the Released Parties

expressly do not intend to imply, any admission as to any alleged fact, finding, issue of law, or violation of law, nor shall compliance with this Consent Decree constitute or be construed as an admission by the Released Parties of any alleged fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligation, responsibilities, and duties of the Parties under this Consent Decree.

XIII. MISCELLANEOUS PROVISIONS

1. Court Approval: This Consent Decree is subject to notice, review and comment by the United States Department of Justice and the Environmental Protection Agency, and approval by the Court, as provided by the Clean Water Act.

2. Effective Date: The Effective Date of this Consent Decree shall be the date of approval and entry by the Court.

3. Term of Consent Decree/Termination Date: As provided above, this Consent Decree shall continue in effect for five (5) years from the Effective Date.

4. Execution in Counterparts: The Consent Decree may be executed in one or more counterparts which, taken together, shall be deemed to constitute one and the same document.

5. Severability: In the event that any of the provisions of this Consent Decree are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected, but the Parties shall use the Dispute Resolution procedures (including access to Court, if necessary) to develop a functionally equivalent provision to substitute for the unenforceable provision.

6. **Construction:** The language in all parts of this Consent Decree, unless otherwise stated, shall be construed according to its plain and ordinary meaning.

7. Authority to Sign: The undersigned are authorized to execute this Consent Decree on behalf of their respective Parties and have read, understood and agreed to all of the terms and conditions of this Consent Decree.

1 8. Integrated Consent Decree: All agreements, covenants,
2 representations and warranties, express or implied, oral or written, of the Parties
3 concerning the subject matter of this Consent Decree are contained herein.

4 9. Delivery of Notice or Documents: Any notices or other documents
5 required or provided for by this Consent Decree or related thereto that are to be
6 provided to any of the Parties pursuant to this Consent Decree shall be sent by
7 facsimile, e-mail transmission, or first-class mail to each of the following
8 representatives of the Parties. Notice shall be deemed to be given and received on
9 the date received by facsimile or e-mail transmission, if such notice is given by
10 facsimile or e-mail transmission to all recipients between 9:00 a.m. and 5:00 p.m.
11 Pacific Standard Time ("PST") on a business weekday. If notice is given by
12 facsimile or e-mail transmission after 5:00 p.m. PST on a weekday or on a weekend
13 day, notice shall be deemed received on the next business weekday.

14 Notices or documents for The Lands Council shall be sent to:

15 Rick Eichstaedt
16 Bricklin & Newman, LLP
17 35 West Main, Suite 300
18 Spokane, WA 99201
19 Telephone: (877) 264-7220
20 Facsimile: (509) 835-3867
21 Email: rick@bnd-law.com

22 and to:

23 Mike Petersen
24 The Lands Council
25 25 W. Main St. Suite 222
26 Spokane, WA 99201
27 Telephone: (509) 838-4912
28 Facsimile: (509) 838-5155
29 Email: mpetersen@landscouncil.org

1 Notices of documents for the City shall be sent to:

2 Mayor
3 City of Pullman
4 325 SE Paradise St.
5 Pullman, WA 99163-2631
6 Telephone: (509) 338-3316
7 Facsimile: (509) 334-2751
8 Email: glenn.johnson@pullman-wa.gov (current)

9 With copies sent to:

10 Craig Trueblood
11 K&L Gates, LLP
12 925 Fourth Avenue, Suite 2900
13 Seattle, WA 98104-1158
14 Phone: (206) 623-7580
15 Facsimile: (206) 370-6196
16 Email: craig.trueblood@klgates.com

17 Public Works Director
18 City of Pullman, Public Works Department
19 325 SE Paradise St.
20 Pullman, WA 99163-2631
21 Telephone: (509) 338-3222
22 Facsimile: (509) 338-3282
23 Email: mark.workman@pullman-wa.gov (current)

24 10. Facsimile Signatures: The Parties' signatures to this Consent Decree
25 transmitted by facsimile shall be deemed binding.

26 11. No Assignment: No assignment of the rights or obligations of the
27 Parties set forth in this Consent Decree shall be effective or enforceable unless the
28 assignment is approved in writing by both Parties.

29 12. Impossibility of Performance: No Party shall be considered to be in
30 default in the performance of any of its obligations under this Consent Decree when
31 performance becomes impossible due to circumstances beyond the Party's control,
32 or when failure to perform is materially contributed to by circumstances beyond the

1 Party's control, including without limitation any Force Majeure, including any act
2 of God, war, fire, earthquake, windstorm, flood or natural catastrophe; civil
3 disturbance, vandalism, sabotage or terrorism; restraint by court order or public
4 authority; or action or non-action by, or inability to obtain the necessary
5 authorizations or approvals from any governmental agency. "Circumstances
6 beyond the Party's control" shall not include normal inclement weather, economic
7 hardship or inability to pay. Any Party seeking to rely upon this paragraph shall
8 have the burden of establishing that it could not reasonably have been expected to
9 avoid, and which by exercise of due diligence has been unable to overcome, the
10 failure of performance.

11 13. Court Approval: If for any reason the Court should decline to approve
12 this Consent Decree in the form presented, the Parties shall use their best efforts to
13 work together to modify the Consent Decree within thirty (30) days so that it is
14 acceptable to the Court. If the Parties are unable to modify this Consent Decree in a
15 mutually acceptable manner within thirty (30) days, this Consent Decree is voidable
16 at the sole discretion of any Party and the terms of this Consent Decree may not be
17 used as evidence in any litigation between the Parties.

18 The Parties hereto enter into this Consent Decree and submit it to the Court
19 for approval and entry as a final judgment.
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2 APPROVED AS TO CONTENT AND FORM:
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7 THE LANDS COUNCIL
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By: Mike Petersen
Mike Petersen, The Lands Council

By: Glenn A. Johnson
CITY OF PULLMAN
Glenn A. Johnson, Mayor

Attest: William F. Mulholland
William F. Mulholland, Finance
Director

DATED _____

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9 IT IS HEREBY ORDERED that this Consent Decree is approved and entered
10 accordingly, subject to the ongoing jurisdiction of the Court, for the purposes of
11 enforcement of this Consent Decree.

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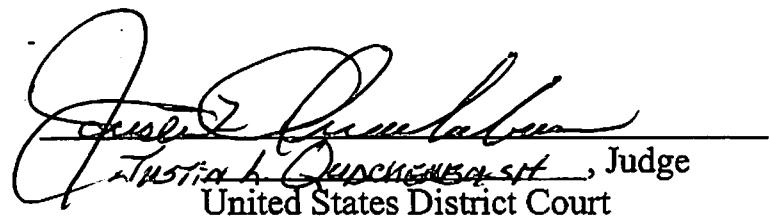
13 APPROVED AND SO

14 ORDERED:

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Joseph L. Pichalowicz, Judge
United States District Court

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Dated: May 3, 2012

Exhibit A

Stormwater Program Enhancement Plan

**CITY OF PULLMAN
Stormwater Program Enhancement Plan
December 2011**

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1.0 BACKGROUND

The City of Pullman ("City") has a stormwater collection system throughout the city limits. All water collected in the stormwater system is routed to outfalls that eventually discharge to the South Fork Palouse River ("SF Palouse") and its tributaries.

The City's stormwater collection system is subject to the regulatory requirements imposed by the National Pollutant Discharge Elimination System ("NPDES") Eastern Washington Phase II Municipal Stormwater Permit¹ ("Stormwater Permit"). The City's stormwater collection system is also subject to the Washington State Department of Ecology's ("Ecology's") Palouse River Chlorinated Pesticide and PCB Total Maximum Daily Load (July 2007) ("PCB TMDL"), and South Fork Palouse River Fecal Coliform Total Maximum Daily Load (October 2009) ("Coliform TMDL"). The City's stormwater collection system was assigned a wasteload allocation under each TMDL. The PCB TMDL concludes that "compliance with the Phase II stormwater permit is the only requirement the city of Pullman needs to fulfill to accomplish the objectives of [the] TMDL" with respect to the City's stormwater collection system. PCB TMDL, p. 61. The Coliform TMDL recommends a number of measures for reducing fecal coliform bacteria in stormwater discharges. Coliform TMDL, pp. 99-100.

The City has elected to collaborate with the Lands Council in preparing this Stormwater Program Enhancement Plan, based on the Lands Council's proactive interest in addressing the City's stormwater discharges. This Plan is meant to further the City's compliance with the Phase II Permit, the PCB TMDL and the Coliform TMDL and to further protect water quality in the South Fork Palouse River and its tributaries.

2.0 THE CITY'S STORMWATER PROGRAM

The Stormwater Permit requires the City to develop and implement a comprehensive stormwater management program by February 2012 that includes the following six main elements:

- 1) Public Education & Outreach
- 2) Public Involvement & Participation
- 3) Illicit Discharge Detection & Elimination
- 4) Construction Site Stormwater Runoff Control
- 5) Post-Construction Stormwater Management for Development
- 6) Pollution Prevention & Good Housekeeping for Municipal Operations

¹ Eastern Washington Phase II Municipal Stormwater Permit, Issuance Date: January 17, 2007, Effective Date: February 16, 2007, Expiration Date: February 15, 2012, Modification Date: June 17, 2009, issued pursuant to the Clean Water Act's National Pollution Discharge Elimination System by State of Washington Department of Ecology. The City's Stormwater NPDES Permit Coverage Number is WAR 04-6504.

To meet these directives, in 2008 the City chose to create a new Stormwater Services Division within the Public Works Department. Early in 2009, the City created a stormwater utility and began charging owners of developed property a utility fee to cover the cost of stormwater management. The new utility is expected to generate approximately \$1,000,000/year in revenue to be solely used on stormwater management in Pullman. To implement the new program, the City hired a Stormwater Services Program Manager in 2008 and a Stormwater Field Technician in 2010. The City is entering the fifth and final year of the current Stormwater Permit cycle and all Stormwater Permit obligations have been met to date. Most notable of these Stormwater Permit obligations included passage of an illicit discharge detection and elimination ordinance in 2009, and recent passage of a combined construction/post-construction stormwater ordinance in January of 2011.

Pursuant to the new construction ordinance, as of February 15, 2011, all construction or grading projects within the City of Pullman that disturb more than 5,000 ft² are required to apply for a City construction stormwater permit in addition to all other required permits. The new permits are intended to facilitate better communication between City staff, builders, developers and property owners, and to provide better tracking of projects for satisfying new State reporting requirements. There are also new requirements for regular inspections and long-term maintenance of both public and private stormwater facilities (i.e. detention ponds).

Further progress toward developing the City's stormwater program in 2010 included:

- Public Education & Outreach – stormwater information distributed on the City's website, through news media, direct mailings; attendance at community events and interaction with the Pullman School District.
- Public involvement – the City partnered with the Palouse-Clearwater Environmental Institute (PCEI) to sponsor the 6th Annual Pullman Stream Clean-up event in April, launched a storm drain stenciling program, and provided stenciling kits for check-out by community volunteer groups.
- Illicit Discharge Detection & Elimination (IDDE) – The City completed an initial inventory and inspection of 2,000 catch basins and 964 manholes using GPS technology; worked with the Engineering Division to update City storm drain maps; and responded to and investigated stormwater/illicit discharge related complaints.
- Construction Site Runoff Control – In addition to facilitating adoption of the Construction/Post-Construction Stormwater Ordinance in January of 2011, the City conducted 155 documented construction-related erosion control inspections; participated in site plan review of new construction; and responded to construction site-related complaints.

- **Post-Construction Stormwater Management** – Stormwater Services staff coordinated with Engineering Division staff to update City MS4 maps to include detention ponds and other public & private stormwater facilities.
- **Pollution Prevention & Good Housekeeping for Municipal Operations** – Stormwater Services staff developed Stormwater Pollution Prevention Plans (SWPPPs) for the City's wastewater treatment plant, transit facility and the Maintenance and Operations yard, as part of development of an overall Operations and Management Plan for controlling pollution originating from all City facilities.

This Stormwater Program Enhancement Plan builds on the City's prior actions to further compliance with the Stormwater Permit and the TMDLs to protect water quality in the South Fork Palouse River and its tributaries.

3.0 ENHANCEMENT MEASURES

This Stormwater Program Enhancement Plan will focus on public outreach and education, stormwater facility maintenance, fecal coliform studies and increased street sweeping. The activities described below will be implemented within one year of the Effective Date of the Consent Decree.

3.1 Facility Inventory

As previously referenced, the City completed an initial inventory of its 2,000 catch basins and 964 manholes using GPS technology in 2010. As part of this Plan, the City will perform work to add its detention ponds and known outfalls to its GPS inventory.

3.2 Public Outreach and Education

Stormwater in the Classroom

The City will continue partnering with the Pullman School District and PCEI to challenge students with water quality and stormwater related exercises that compliment the District's science curriculum. The City will contract with PCEI to work with teachers to create and deliver approximately 30 - 35 stormwater programs in local schools.

Efforts will focus on Fifth and Eighth Grades at Jefferson Elementary, Sunnyside Elementary, Franklin Elementary, Lincoln Middle School and Royal Garrison School. A lesson on stormwater will also be created for tenth graders at Pullman High. Students will also be encouraged to get outside the classroom and attend the City's annual stream clean-up event (see below).

Annual Pullman Stream Clean-up

The City will again partner with PCEI to conduct its Annual Stream Clean-up event in the spring. In addition to staff and equipment, the City will provide full financial sponsorship of PCEI's involvement. This event typically involves more than 100

volunteers in collecting trash along the segments of the SF Palouse and its tributaries that run through Pullman. In 2010, volunteers filled eight 55-gallon drums with recyclables and an entire dumpster with trash. This year, the City hopes to increase turnout for the event and expand the coverage area for litter removal.

Pullman Adopt-a-Stream Program

The City will contract with PCEI to launch a pilot program modeled after the adopt-a-highway program, where community groups and/or businesses can "adopt" a segment of stream in town and then be responsible for keeping it clean. The program builds on the City's Annual Stream Clean-up to increase community involvement and support in stormwater management issues. The goal is for each segment of the waterways to have a "stream steward" – a community group, business, family, or other group – to implement ongoing cleanup efforts and also participate in a Fall River Festival. The City will install and maintain Adopt-a-Stream signs in various locations and provide staff and financial support for the program.

3.3 Stormwater Facility Maintenance

The City has approximately 2,000 catch basins, 964 manholes, 37 miles of pipe, 14 miles of natural drainages, 85+ outfalls, 30+ detention ponds and other public stormwater drainage facilities within its limits.

To facilitate maintenance of those facilities, the City will purchase additional maintenance equipment, including a combination water jet-vactor truck. The truck will cost more than \$350,000. The truck will allow City staff to clean catch basins and remove sediments as part of a regular Operations and Maintenance schedule.

The City will also dedicate 1.08 full-time equivalent (FTE) maintenance staff members for performing regular maintenance on the stormwater system. As part of this Plan, the City will complete maintenance on at least 95 percent of its catch basins.

3.4 Fecal Coliform Studies

Stadium Way Fecal Coliform Bacteria Study

The City will conduct a pilot study to attempt to identify sources of fecal coliform bacteria within the drainage basin near the stormwater outfall to Missouri Flat Creek at Stadium Way and North Grand Avenue in Pullman. As part of the TMDL process, the Washington State Department of Ecology ("Ecology") identified this outfall as needing a reduction in fecal coliform contribution. The drainage basin is shared by both the City and Washington State University (WSU).

The City will contract with an environmental consultant to perform traditional microbial and flow monitoring of the outfall and conduct further investigation to characterize the system and track sources of fecal coliform. The consultant will conduct reconnaissance throughout the system using alternative methods and technology that, if successful, may provide Pullman (and other jurisdictions) with a more reliable and cost-effective

means of identifying illicit connections to the MS4. Information obtained through the study will be used to facilitate further efforts to reduce fecal coliform sources to the stormwater system in this area.

3.5 Street Sweeping

The City has approximately 62 miles of streets within its jurisdiction to sweep. Studies show that frequent street sweeping can be an effective best management practice for reducing pollutants in stormwater. The City's current street sweeping plan provides for all streets to be swept twice per year: once in the Spring and once in the Fall. The City also currently allocates four (4) staff hours each week on sweeping streets in the commercial district. As part of this Plan, the City will add an additional eight (8) hours of staff time per week for sweeping all other streets in the City on a rotational basis, taking into account that street sweeping is not feasible when streets are covered with significant snow or ice. This will approximately triple the average weekly amount of time allocated for street sweeping, not including the spring and fall sweeping.